

IN THE MATTER OF	:	BEFORE THE
SKIRVEN ENTERPRISES, LLC	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 05-48C

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DECISION AND ORDER

On March 13, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Skirven Enterprises, LLC, Petitioner, for a conditional use for age-restricted adult housing in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 131.N.1 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioner. No one testified in support or opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the contract purchaser of the subject property, known as 8960 Frederick Road, which is located in the 2nd Election District on the north side of

Frederick Road opposite Dunloggin Road in Ellicott City (the “Property”). The Property is referenced on Tax Map 24, Grid 11 as Parcels 115 and 117.

2. The Property is an irregular shaped lot comprised of two parcels totaling about 10.9 acres. The Property has about 1,070 feet of frontage along Frederick Road. The site is about 329 feet deep along its east side lot line and widens gradually to depth of about 580 feet at its western end. The central portion of the Property is about 460 feet deep.

The Property is unimproved and is wooded primarily in the east, south and west sides. The highest portion of the Property is in the northwest corner, from which the site slopes down about 60 feet toward the southeast and a perennial stream. An intermittent stream flows through portions of the west side of the site. The north and northeast portions of the site are open. A 100 year floodplain runs from the southeast to the northeast portion of the Property. The southern areas of the site are steeply sloped.

3. Vicinal properties include:

(a) To the north are two B-2 zoned properties, Parcels 717 and 1033, which contain a motor vehicle sales/storage facility and a telecommunications company facility. A narrow portion of Parcel 1033 extends along the east side of the Property to Frederick Road.

(b) To the east are several R-ED zoned properties improved with single-family detached dwellings situated close to the Frederick Road frontage.

(c) To the south across Frederick Road is an R-20 zoned development of single-family detached dwellings, some of which front on Frederick Road.

(d) To the west of the Property are Parcels 786 and 784, two B-2 zoned lots containing a contractor's facility and a strip shopping center. To the northwest is the R-20 zoned West Gate Woods subdivision of single-family detached homes.

4. The Petitioner proposes to construct an age-restricted adult housing community consisting of 57 single-family attached dwellings. Twenty of the units will be arranged in three blocks situated 20 feet from the rear lot line and 140 feet from the east side lot line. Eleven more units will be located south of these units, about 140 feet from the front lot line, across a private road designated on the plan as Road "C." In the western portion of the Property, a block of seven units will be situated 20 feet from the western lot line and 100 feet from the Frederick Road frontage, and a block of seven units will be situated 75 feet from the northwest lot line adjoining West Gate Woods. Five units will be located east of these units across a road designated on the plan as Road "B." A block of seven units will be located in the central portion of the of the site, about 140 feet from Frederick Road, along an entrance road designated on the plan as Road "A." This entrance road will begin at about the center of the Frederick Road frontage about 160 feet east of Dunloggin Road and will be served by both an acceleration lane and a deceleration lane.

The dwelling units will be about 68 feet deep, 40 feet wide, and no more than 34 feet high. They will contain 3-4 bedrooms and a master bedroom either on the first floor or second floor with an elevator. All units will incorporate universal design features to make the units adaptable for residents with limited mobility. Six of the units will be moderate-income housing units. Each unit will be set back at least 20 feet from an

interior roads or driveways. Either a condominium association or a homeowners association will be established for the development to enforce the age restrictions.

A 30' by 40' one story community building will be located in the northwest corner of the site. Recreational open space areas are designated in the northeast and southeast portions of the site, next to the community center, and at the center of the units in the western portion of the site. These recreational open space areas total about 26,052 square feet.

Each unit will have an attached two-car garage and two parking spaces in the driveway. In addition, there will be seven parking spaces located along the south side of Road "C," seven spaces in front of the community center, and three spaces at the south end of Road "B." Trash dumpsters will be located at the termini of Roads "B" and "C" which will be screened by enclosures and/or landscaped.

An underground stormwater management facility will be located beneath the recreation open space area in the eastern end of the Property. A larger facility will be located in the southern portion of the site. Landscaping will consist of Type "C" buffers in the northwest corner adjacent to West Gate Woods, along the east side, and in the southwest portion of the site. Type "A" buffers will be installed along the north and southwest perimeters. In addition, existing trees and vegetation will be retained along the southern perimeter and in the southeast portion of the site. Sixty-four percent (64%) of the Property will be open space.

5. The 2000 General Plan designates the Property as a "Residential Area" land use. The Property will be served by public water and sewer facilities. Frederick Road is a minor arterial roadway with two travel lanes and a variable pavement width within a

variable width right-of-way. The speed limit in the area of the Property is 35 mph. Visibility from the proposed entrance road is about 450 feet to the east and over 600 feet to the west.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “Residential Area” land use. Age-restricted adult housing developments are commonly found in residential areas and are presumptively considered compatible with residential land uses. The proposed development of six dwelling units per net acre is of less than the maximum allowed of 8 units per net acre. The units will be located toward the center and rear of the 10.9-acre Property and away from residential lots to the south. The development will have access to Frederick Road, a minor arterial. The development will be located between commercial properties to the north and residential properties to the south, serving as an appropriate transition between these uses. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.¹

¹ In my view, the large size of the proposed units pushes the limits of the County Council’s intent and purpose in enacting the age-restricted adult housing conditional use. *See* Decision and Order, Robert B. Williams, et al., BA Case No. 05-046C. In this case, however, there are distinguishing factors – for example, the units are attached, arranged in smaller masses, and well separated from single family residential properties.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed age-restricted adult housing development has adverse effects in the R-SC zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-SC district.

For the reasons stated below, I find that the Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with an age-restricted adult housing development in the R-SC district:

1. Physical Conditions. The Petitioner's proposed 57-unit development will consist of typical residential activities associated with age-restricted adult housing. The proposed use will be of relatively low intensity, given the age restrictions required by the use. The dwelling units will be centrally located and face inward, and parking will be located in garages or on driveways or parking spaces located toward the rear and center of the site. The only outdoor activities proposed are passive. The outdoor recreation areas will be well separated and buffered from vicinal residential properties. No outdoor lighting is proposed. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently

associated with an age-restricted adult housing development in the R-SC zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. The proposed new structures will be located toward the center or rear of the site. The structures will be well set back from residential property lines and will be well buffered from adjoining properties by existing or proposed landscaping. Consequently, provided that a Type “C” landscape buffer is installed along the eastern lot line, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner will provide a two-car garage and two driveway parking spaces for each of the 27 units in the development. In addition, 17 parking spaces will be provided along the internal roads, for a total of 245 parking spaces, which is well in excess of the required 114 parking spaces. The parking areas and drives are located toward the center of the site and adequately screened from Frederick Road and vicinal residential properties by distance and the existing and proposed landscaping. The proposed refuse areas will be adequately screened and buffered. Consequently, parking areas are of adequate size and parking areas, driveways, and refuse areas are properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The access drive from Frederick Road is properly located and has adequate sight distance in both directions. The proposed acceleration and

deceleration lanes will provide safe transition to and from Frederick Road. Consequently, the ingress and egress drive will provide safe access with adequate sight distance and with adequate acceleration and deceleration lanes where appropriate, as required by Section 131.B.2.d.

II. Specific Criteria for Age-Restricted Adult Housing (Section 131.N.1).

1. The Petitioner proposes to construct single-family attached dwelling units as permitted by Section 131.N.1.a.

2. The development will consist of 57 units, in excess of the 20 dwelling units required in an R-SC zone by Section 131.N.1.b.

3. The proposed density of six dwelling units per net acre is less than the maximum of eight units per net acre allowed by Section 131.N.1.c.

4. Each home in the development will be no more than 34 feet in height, within the maximum height allowed by Section 131.N.1.d(1). All proposed structures will be set back at least the minimum set back distances required by Section 131.N.1.d(2). Each unit will be set back at least 20 feet from the interior roads or driveways, as required by Section 131.N.1d(3). The units also comply with the minimum distances between buildings as required by Section 131.N.1.d(5).

5. Sixty-four percent (64%) of the Property will be open space, in excess of the minimum of 35% in the R-SC zone as required by Section 131.N.1.e. The Petitioner proposes to create three recreation open space areas which will be available to residents of the community and will be protective of the natural features of the Property.

6. No accessory uses are proposed; therefore, Section 131.N.1.f does not apply.

7. The proposed 1,200 square foot community building provides over 21 square feet of floor space per dwelling unit in the development, in excess of the minimum of 20 square feet of floor space required by section 131.N.1.g.

8. No loading area is proposed. The trash receptacles will be enclosed and screened from view, in compliance with Section 131.N.1.h.

9. Existing trees and vegetation will provide an adequate buffering along the northwest, east and south perimeters of the Property. In addition, the Petitioner proposes to install Type “C” buffers in the northwest corner adjacent to West Gate Woods, along the east side, and in the southwest portion of the site. Type “A” buffers will be installed along the north and southwest perimeters. Consequently, the project is designed to provide adequate buffering along the perimeter of the site, as required by Section 131.N.1.i.

10. The development will not be constructed in phases, so that Section 131.N.1.j does not apply.

11. The individual properties will be subject to either a condominium regime or homeowner association covenants restricting occupancy to households having at least one member who is 55 years or older, in compliance with Section 131.N.1.k.

12. All open space, common areas and improvements will be managed and maintained by the condominium association or homeowner association in compliance with Section 131.N.1.l.

13. The dwelling units will include universal design features to make them accessible by or adaptable for residents with limited mobility, in accordance Section 131.N.1.m.

14. At least 10%, or 6, of the dwelling units will be moderate income housing units in compliance with Section 131.N.1.n.

ORDER

Based upon the foregoing, it is this **27th day of April 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Skirven Enterprises, LLC, for a conditional use for age-restricted adult housing in an R-SC (Residential: Single Cluster) Zoning District, is hereby **GRANTED;**

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.